

**City of Seattle**



**OFFICE OF HEARING EXAMINER**  
**2010**  
**ANNUAL REPORT**

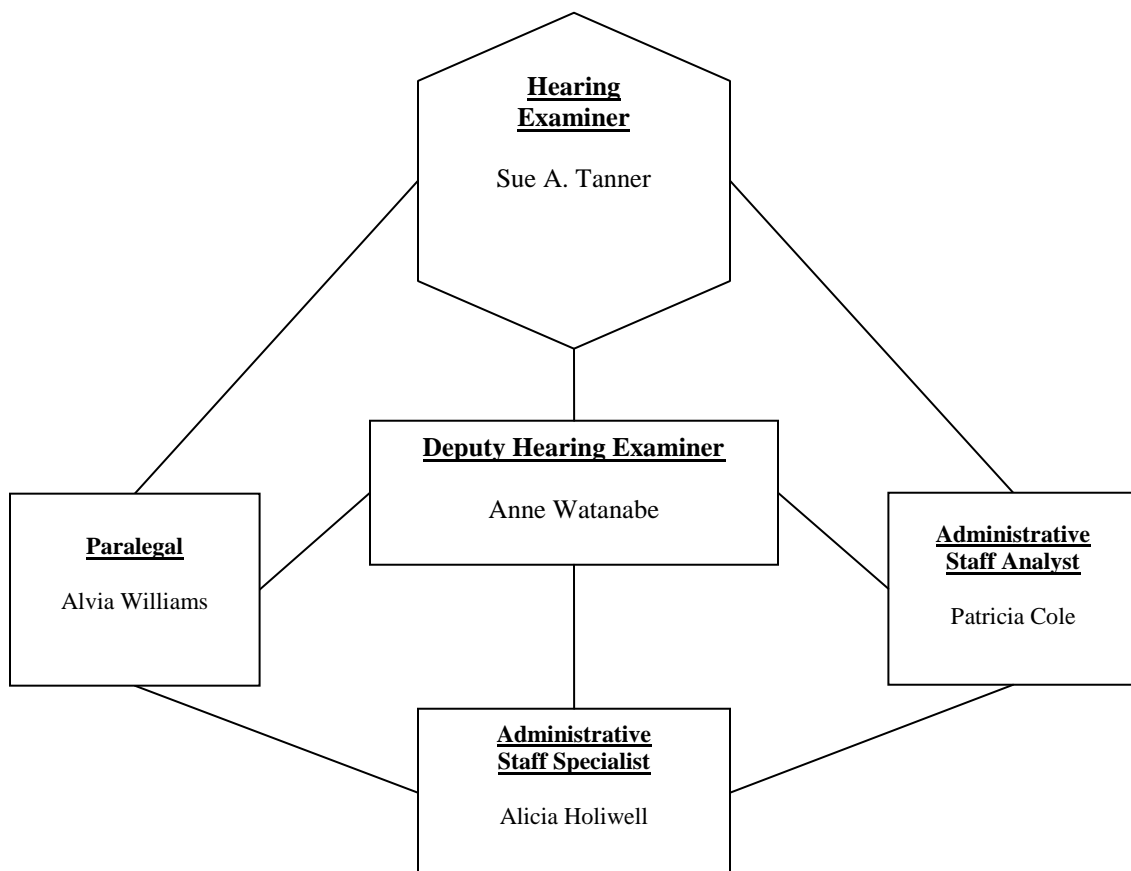
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**February 2011**

2010  
City of Seattle  
**CITY COUNCIL**

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TIM BURGESS  
SALLY CLARK  
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JEAN GODDEN  
BRUCE HARRELL  
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**2010 Organizational Chart**



**CITY OF SEATTLE**  
**OFFICE OF HEARING EXAMINER**  
**2010 ANNUAL REPORT**

**Mission and Authority**

The mission of the Office of Hearing Examiner is to conduct fair and impartial administrative hearings in matters where jurisdiction has been granted by the Seattle Municipal Code, and to issue clear and timely decisions and recommendations that are consistent with applicable law.

The position of Hearing Examiner is established in the Seattle Municipal Code, and the Hearing Examiner is appointed by the City Council to serve an initial one-year term and subsequent four-year terms. The Hearing Examiner is responsible for all functions of the Office and is authorized to appoint Deputy Examiners and other staff. The inside front cover of this report shows the organization chart and Office staff for 2010.

The Office of Hearing Examiner is created as a separate and independent City office under Chapter 3.02 of the Seattle Municipal Code. Before the Office was created in 1973, some appeals of administrative decisions were heard by the City Council; others went directly to court. Pursuant to authority conferred throughout the Code, the Office of Hearing Examiner now provides an independent hearing forum to review decisions made by many City agencies and provide recommendations to the City Council on some land use applications.

**Jurisdiction**

The Office of Hearing Examiner currently has jurisdiction over more than 75 different types of matters.<sup>1</sup> We track all cases that come into the Office as “Cases Filed”. The most numerous of these are appeals of decisions made by other City agencies, such as the Department of Planning and Development (Master Use Permits, SEPA determinations, Code Interpretations, Land Use and Noise Enforcement Citations and decisions on tenant relocation assistance); the Department of Finance and Administrative Services (tax assessments, licensing decisions); the Landmarks Preservation Board and Special Purpose District Commissions (decisions certificates of approval for alterations); and the Department of Transportation (right-of-way use).

When the Hearing Examiner has original jurisdiction, the Examiner makes the initial decision in a case rather than reviewing another department’s decision. Original jurisdiction cases include subdivision applications processed by the Department of Planning and Development; complaints of discrimination in employment, housing, public accommodation, or public contracts filed by the Office for Civil Rights and the City Attorney’s Office; complaints for third party utility billing violations; petitions for review of floating home moorage fee increases; and others.

The City Council has retained jurisdiction over certain land use actions, including Council conditional uses, rezone proposals, major institution master plans, planned unit developments,

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<sup>1</sup> See complete list at pp. 17.

and landmark controls and incentives. For these cases, the Hearing Examiner holds a public hearing for the Council, gathers information to establish the record, and forwards the record and a detailed written recommendation to the Council for its use in making the decision.

### **Accessibility**

An administrative hearing before the Hearing Examiner is a quasi-judicial process, which involves the application of existing law and policy to the specific facts of a case. Constitutionally guaranteed due process requires procedural safeguards for those whose rights are affected by the outcome of the case. The hearing format resembles an informal court proceeding and is structured to provide a fair opportunity for each party to participate, while also reflecting the seriousness of the matters appealed for those involved.

The Office of Hearing Examiner uses several tools to make the hearing process understandable and “user friendly,” while at the same time protecting the rights of parties and fulfilling legal requirements. Examples include: a “Public Guide,” which is a booklet that explains the hearing process in a question and answer format; “fill-in-the-blanks” appeal forms; an explanatory letter that is sent along with the notice of hearing in each case; and two pocket-sized pamphlets that include basic information about the hearing process and are available from the Office, neighborhood centers, and most libraries. In addition, the pamphlet on code enforcement citation hearings is included with each citation issued. Where indicated, a card in one of the City’s six core languages, or Russian, is handed out with a citation. The card explains what basic hearing-related information is available from the Office of Hearing Examiner. We also solicit feedback from those who participate in hearings. A “Customer Satisfaction Survey” is available in our office and hearing rooms, as well as on-line, and may be completed anonymously.

The Hearing Examiner’s website, at [www.seattle.gov/examiner](http://www.seattle.gov/examiner) includes the Hearing Examiner Rules, the “Public Guide,” appeal forms, a schedule of upcoming hearings, the “Customer Satisfaction Survey,” the most recent annual report, and information on making a request for disclosure of public records. Decisions dating back through 1990 are also available in a searchable database through a link on the website.

### **Contracting**

Since 2004, the Hearing Examiner has been authorized by Seattle Municipal Code to provide hearing examiner services to other jurisdictions via contract. We currently provide contract examiner services to five cities: Kirkland, Mercer Island, Puyallup, Shoreline and Tukwila. Our work for four of our contract cities was noticeably reduced in 2009, but the the addition of the City of Puyallup late that year served to stabilize our workload in 2010. In 2009, our contract workload was reduced to 17 hearings conducted and 17 decisions issued, compared with 25 hearings and 23 decisions in 2008. In 2010, with the addition of Puyallup, the trend reversed, and we conducted 20 hearings and issued 25 decisions for our contract cities. In addition to bringing in a modest amount of revenue for the City’s general fund, working with other cities adds variety to our case load and keeps us flexible.

### **Judicial Appeals of Hearing Examiner Decisions**

At the request of the City Council, and with the assistance of the City Attorney’s Office, the Office of Hearing Examiner tracks the results of judicial appeals of Hearing Examiner decisions. The following appeals were decided in 2010:

In *Friends of Cedar Park Neighborhood v. City of Seattle*, King Cy. Superior Ct.#08-2-29531-1SEA, the superior court affirmed a decision by the Hearing Examiner upholding a DPD decision to approve a short subdivision of property located in an environmentally steep slope area. The case was appealed to the court of appeals, which also affirmed the decision.

In *Fremont Neighborhood Council et al. v. City of Seattle*, King Cy. Superior Ct.#08-2-41324-1SEA, the superior court affirmed the Hearing Examiner's decision upholding the SEPA Determination of Nonsignificance issued by Seattle Public Utilities for reconstruction of the North Recycling and Disposal Station in Wallingford. The decision was appealed and is awaiting a decision by the court of appeals.

In *Conner v. City of Seattle*, King Cy. Superior Ct.#08-2-16690-5SEA, the superior court and court of appeals affirmed the Hearing Examiner's decision upholding a decision by the Landmarks Preservation Board that denied a certificate of approval for construction of three houses on the grounds of Satterlee House, a designated landmark site in West Seattle. The developer filed a petition for review in the Supreme Court, which was denied.

In *Salmon Bay Sand and Gravel, Inc., et al. v. City of Seattle, et al.*, King Cy. Superior Ct.#09-2-26586-1SEA, opponents of the location of a project to construct the "missing link" of the Burke-Gilman Trail appealed the Hearing Examiner's decision upholding the SEPA Determination of Nonsignificance issued for the project by SDOT. The superior court affirmed most of the Examiner's decision but remanded part of the case to SDOT for completion of environmental review on one segment of the trail. The appellants sought discretionary review from the court of appeals on the part of the decision that was affirmed, but review was denied.

In *Save the Trees v. City of Seattle*, King Cy. Superior Ct.#10-2-27966-1SEA, the superior court affirmed a Hearing Examiner decision upholding DPD's approval of a revised Master Use Permit application by the Seattle School District for construction of an addition and alterations that would encroach upon a grove of evergreen trees on the Ingraham High School campus.

In *Getty Images v. City of Seattle* King Cy. Superior Ct.#09-2-27132-1SEA, the superior court affirmed a Hearing Examiner decision upholding a decision by the City that Getty Seattle, a Seattle affiliate of Getty Images, was subject to City B&O tax on the fees paid for services provided by Getty Seattle to national and international affiliates of Getty Images, even though the fees were paid to a wholly owned subsidiary of Getty Seattle that was located in another state. The decision is now on appeal to the court of appeals.

In *Keyport Food, LLC v. City of Seattle*, King Cy. Superior Ct. #09-2-28121-1SEA, the superior court affirmed a Hearing Examiner decision upholding a decision by the City that a taxpayer was subject to City B&O taxes on amounts received for seafood deliveries to customers with Seattle addresses because the taxpayer did not present sufficient information to show that the deliveries occurred outside Seattle.

The superior court had not entered orders by year's end in appeals of three 2010 Hearing Examiner decisions: *Magathan v. City of Seattle*, King Cy. Superior Ct.#10-2-28703-5SEA; *17<sup>th</sup> and James, LLC v. City of Seattle*, King Cy. Superior Ct.#10-2-40043-5SEA; and *Johnson v. City of Seattle*, King Cy. Superior Ct.#10-2-44876-4SEA. We will report on the outcome of these appeals in the next annual report.

## **Case Highlights**

Every year includes cases that are noteworthy, either because of the controversy surrounding them or because they present important issues in the application of the Seattle Municipal Code. The brief case descriptions that follow highlight some of these cases that came before the Hearing Examiner in 2010. (The complete decision or recommendation can be found through a link at [www.seattle.gov/examiner](http://www.seattle.gov/examiner) using the Hearing Examiner case number included in parentheses after each case description below.)

- Bright lights (or at least, bright signs) and the City's skyline were the subjects of a SEPA appeal involving a proposed amendment to the sign code. Although the existing sign code allowed hotels and public buildings to bear signs above 65 feet, the proposed code changes would allow other buildings to have signage above 65 feet. Only a few buildings would be able to install such signs, but the Appellant argued that more signs at these heights, particularly when lit, would greatly alter the City's skyline, including familiar views of the City at night. The Hearing Examiner denied the SEPA appeal, concluding that while new signs could change the appearance of the City's skyline, DPD was correct in determining that an EIS was not required on account of such impacts. (W-10-004)
- The owner of a landmark building submitted a MUP application that preserved the two key façades of the building and proposed renovation of the building and a tower above it. After the Landmarks Preservation Board suggested that he explore a design that reduced the tower height and set it back from the existing façades, the owner decided to demolish the building and construct a new 22-story building. He withdrew his application for a certificate of approval from the Board and directed all his efforts toward persuading it that under the Board's proposed controls for the building, no development scenario would produce a sufficient return on investment. The proposed controls would require the owner to obtain a certificate of approval from the Board before altering or significantly changing the two key building façades. When negotiations reached an impasse, the Board forwarded the recommended controls and incentives to the Hearing Examiner, and the owner filed a statement objecting to them. The owner continued to assert that under the proposed controls, no development scenario for the building would be expected to produce a sufficient return on investment. But the Examiner rejected that argument because the owner's analysis was based on the faulty premise that the controls would limit any development of the property to the shell of the existing building. The certificate of approval process is designed to explore alternatives to achieve both the owner's and the City's needs relative to a landmark. Because the owner had terminated the process, there was no evidence in the record of what could ultimately be developed on the site, or whether it would provide the owner with a sufficient return. The Examiner recommended that the City Council adopt the Board's recommended controls and incentives for the building, which they recently did. The matter has been appealed to superior court. (LP-10-001)
- In 2009, the Hearing Examiner heard a SEPA appeal concerning a classroom addition at Ingraham High School campus that involved the removal of a number of large, mature trees from the site. On remand, the Examiner directed DPD to consider avoidance or reduction of impacts on the trees as part of its SEPA review of the proposal. DPD evaluated and approved the School District's revised plan, which reduced the addition's footprint in order preserve more trees but did not preserve all

of the trees. In their 2010 appeal, the Appellants argued that the revised project could instead be located elsewhere on the Ingraham campus in order to save the trees. But the Examiner affirmed DPD's decision, concluding that the revised plan adequately mitigated the project's impacts, although some trees would still be removed. The decision was affirmed by the superior court. (MUP-10-007 & -008)

- Project approval can falter for reasons completely unrelated to the substance of the project. A proposal for a 14-story residential structure on Western Avenue drew a great deal of attention from neighbors and interest groups because of its location adjacent to the Olympic Sculpture Park. The Department's SEPA Determination of Nonsignificance and design review approval for the project were appealed, but the Hearing Examiner did not reach the substantive appeal issues. Notice of two of the Design Review Board's (DRB) three meetings on the project was not sent to the president of a condominium building located directly across the street from the project site, despite her express requests to be made a party of record. Although she inadvertently discovered the date of the DRB's last recommendation meeting on the proposal and attended it, her comments to the DRB were challenged as being too late, and the DRB proceeded with its recommendation of approval. The Examiner determined that the error in notice had affected the validity of the entire review process for the proposal, requiring that the Director's decision approving it be reversed. (MUP-09-021 & -022)
- A group calling itself the Homeless Remembrance Committee sought to install a "Tree of Life" sculpture and landscaping in Victor Steinbrueck Park. The Parks Department approved the proposal, hoping to activate a corner of the park that had fallen into disuse. However, the Pike Place Market Historical Commission denied the application, concerned that the artwork and landscaping would change Steinbrueck Park in a way that violated the Pike Place Market District guidelines. The Committee appealed, and the Examiner reversed the Commission's decision, concluding that the Commission relied on District guidelines that did not apply to Steinbrueck Park, and that the proposed sculpture and landscaping were consistent with the few guidelines that did apply. The Commission has since adopted new guidelines applicable to Steinbrueck Park. (R-10-001)
- A Major Institution Master Plan (MIMP) approved for Providence Medical Center campus in 1994 was to expire in 2009. A private developer purchased approximately half of the campus in 2002, including property adjacent to single-family residential zoning and development. The MIMP, approved under former Code provisions, was quite specific about the height, bulk, scale and intensity of development allowed on various parts of the campus. The block adjacent to single-family development was designated for the least intensive development, with three lowrise buildings, three existing single-family homes and an existing parking lot. The MIMP provided that if Providence acquired the remaining development on the block, the development scale and intensity could be reduced even further. In 2008, the Department granted the developer's two-year extension request for the MIMP as a "minor amendment". Later that year, the developer submitted plans for a complex of two, three-story buildings that spanned the entire block and were connected by an "auto/pedestrian plaza" that led to parking for 344 vehicles. The Citizens Advisory Committee for the MIMP recommended that the proposal be considered a major amendment, which would invoke most of the procedural requirements for a new master plan. The Department determined that the proposal was a "minor amendment" of the MIMP and approved

it. On appeals filed by the neighbors, the Hearing Examiner reversed the Department's decision. The Examiner determined that the proposed bulk, scale and intensity of development far exceeded that contemplated for the site by the MIMP and thus, was inconsistent with it and would result in significantly greater bulk and scale impacts than those contemplated by it. The decision has been appealed to court. (MUP 10-010,-011 and-012)

### **2010 Caseload**

Table 3, on page 14, presents a complete summary of case activity for 2010. “Cases Filed” and “Decisions Issued” are discussed in more detail below.

**Table 1 – 2010 Cases Filed**

	<b>2010</b>	<b>2009</b>	<b>2008</b>	<b>2007</b>	<b>2006</b>	<b>2005</b>	<b>Previous 5-Yr. Average (05-09)</b>
<b>B&amp;O TAX ASSESSMENTS</b>	6	14	6	10	14	12	11
<b>COUNCIL RECOMMENDATIONS</b>	10	6	9	1	10	7	7
<b>LAND USE CODE INTERPRETATIONS</b>	4	15	8	6	0	2	6
<b>LANDMARKS/SPECIAL REVIEW DISTRICT (Pioneer Sq., Pike Market, ID, etc.)</b>	4	4	5	5	5	11	6
<b>LICENSING (taxis, adult entertainment, etc.)</b>	6	12	17	19	12	10	14
<b>MASTER USE PERMITS (MUP)</b>	25	22	39	39	44	39	37
<b>OTHER JURISDICTIONS (Public Nuisance, Third Party Billing, etc.)</b>	19	39	19	26	30	23	27
<b>SEPA-only Appeals (non MUP)</b>	6	2	7	2	3	10	5
<b>TENANT RELOCATIONS</b>	2	7	7	18	23	15	14
<b>TOTAL WITHOUT CITATIONS</b>	82	121	117	126	141	129	127
<b>LAND USE CITATION ENFORCEMENT ACTIONS</b>	479	341	361	316	214	209	288
<b>SDOT CITATION ENFORCEMENT ACTIONS</b>	90	99	161	65	125	47	119
<b>TOTAL CITATIONS</b>	569	440	522	381	339	256	408
<b>GRAND TOTAL</b>	651	561	639	507	480	385	534



## Non-Citation Cases Filed

There were just 82 Non-Citation cases filed with the Office of Hearing Examiner in 2010, lower than the number filed in any of the last five years. As it does each year, the mix of cases changed somewhat, as well.

Appeals from **tax assessments** went from 14 in 2009 to 6 in 2010, which was the same number that were filed in 2008, but fewer than the number filed in 2005, 2006 and 2007.

Cases involving **recommendations to the City Council** went up in 2010 to 10, compared to the 6 filed in 2009, and exceeded the previous five-year average.

The number of **Land Use Code interpretation** appeals filed in 2010 (4) was approximately one-quarter of the number filed in 2009 (15), and was below the previous five-year average of 6.

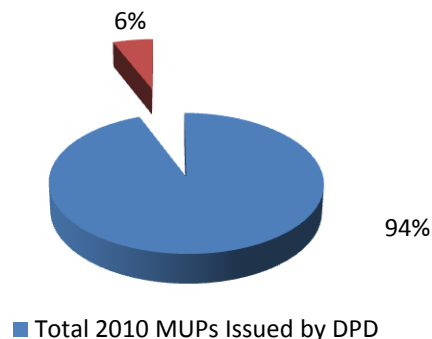
There were 4 **landmark and special district appeals** filed in 2010, the same number that were filed in 2009 and just 1 fewer than the number filed in each of the previous three years.

**Appeals of licensing decisions** were down to 6 in 2010, compared with 12 filed in 2009, 17 in 2008 and 19 in 2007. All appeals but one were related to adult entertainment license suspensions. One was an appeal of an order determining that an animal met the criteria for a “dangerous animal” under the Code and ordering humane disposal.

A **Master Use Permit, or MUP**, is a document issued to a permit applicant that includes all land use decisions made by the Department of Planning and Development on the application. MUP appeals are some of the most complex matters handled by the Hearing Examiner, as they often involve multiple parties, complicated facts, substantial controversy, several days for hearings and considerable time for review and decision-writing.

The number of MUP appeals has been between 39 and 44 for several years but fell to 22 in 2009. In 2010, the number increased to 25. Of the 404 MUPs issued by the Department of Planning and Development, 6% were appealed. This is approximately 1½ % higher than the appeal rate during any of the last five years.

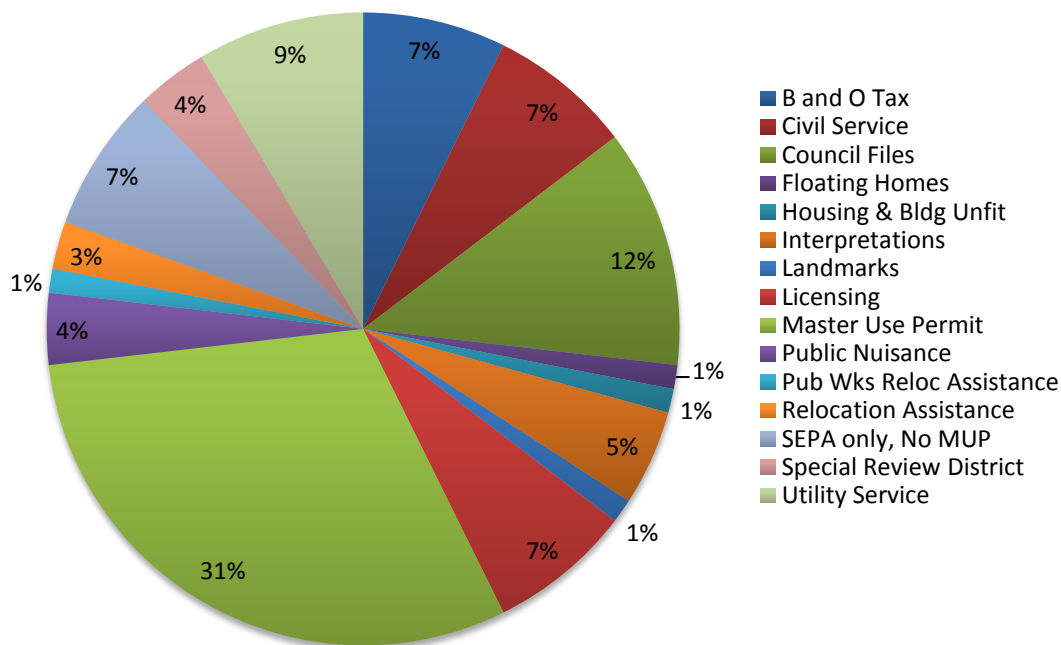
**2010 Master Use Permit Case Activity**



**SEPA-only appeals** are appeals of environmental determinations made for two types of proposals: 1) proposals, such as legislation, that do not require a MUP or Council land use decision; and 2) proposals that require a MUP or a Council land use decision, but for which a department other than DPD makes the environmental determination on the proposal. SEPA-only appeals have averaged between 2 and 4 for several yaears but increased to 6 in 2010.

**Appeals from denials of tenant relocation assistance** dropped to just 2 in 2010, the lowest number we have seen in over five years.

**2010 Non-Citation Cases Filed by Type**



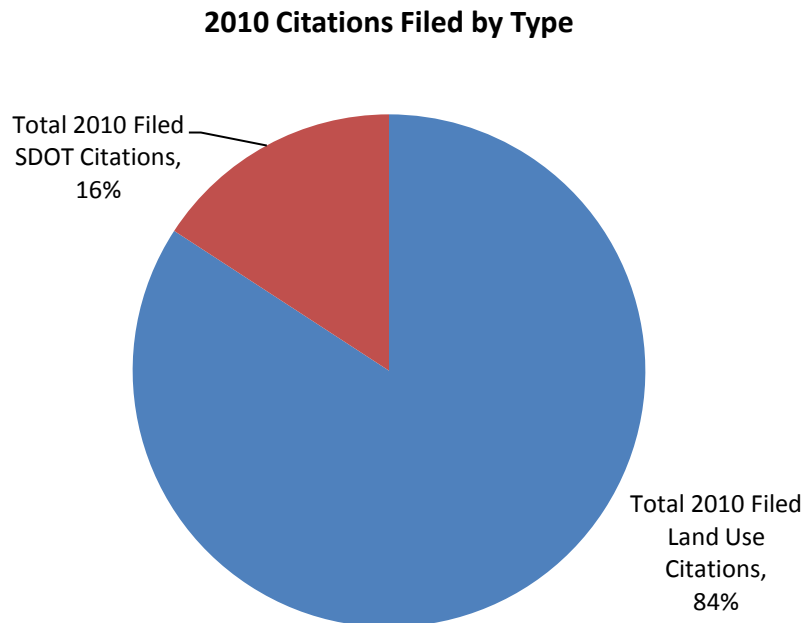
### Citation Enforcement Cases Filed

Because citation enforcement cases follow a unique procedure, we track them separately from other categories of cases. When citations are issued, a copy is sent to the Office of Hearing Examiner. If someone files an appeal of a citation, it is removed from the others and set up for an appeal hearing and decision. For citations that are neither paid nor appealed, the Office of Hearing Examiner prepares and sends out orders of “default” which note the failure of the party to respond, find that the violation has been committed and impose the cited penalty, as required by the Code.

Last year was the first full year for implementation of the Noise Code citation process. Because few Noise Code violations reach the level of a citation, and both **Noise Code and Land Use Code citations** are issued by DPD, we have combined them for tracking purposes. The number filed in 2010 (480) was an increase of over 40% from the number

filed in 2009 (341). We have not seen an increase of that magnitude since citation filings increased by approximately 41% between 2006 and 2007.

**SDOT citation cases** (use of right-of-way without a permit, vending in a no-vending area, etc.) are similar to Land Use Code citations, and they are reflected in the “Citation” category of cases in the tables. In 2003, the first full year of SDOT enforcement activity, 35 appeals were filed. That number rose to a high of 161 in 2008, but dropped to just 99 in 2009. The number filed in 2010 (90) was similar. The decline in SDOT citations has been seen primarily in citations issued for sporting event ticket sales in a no-vending zone.



### **Prehearing, Hearing and Decision Activity**

**Prehearing Conferences.** The Office of Hearing Examiner held 32 prehearing conferences in cases scheduled for hearing in 2010. Under the Hearing Examiner Rules, prehearing conferences can be held at the request of either a party or the Hearing Examiner. The conferences are designed to determine the parties’ interest in mediation, and if a case will not be mediated, to organize and prepare a case for hearing, including clarifying the issues to be addressed, facilitating disclosure of each party’s intended witnesses and exhibits, and establishing a case schedule for prehearing motions and other matters. Following the conference, the Examiner normally issues a prehearing order memorializing any agreements reached or rulings made at the conference. Prehearing conferences are usually held in MUP, SEPA, civil service and tax appeals, and are scheduled in other types of cases as needed. Prehearing conferences in cases for our contract cities are less frequent and are usually held via telephone. We held four of them in 2010.

**Prehearing Decisions.** Prehearing motions are frequently filed in MUP, landmark, SEPA, tax and civil service cases. Most are on substantive or procedural legal issues that the parties can address fully in written memoranda. While they often require legal research and a written decision by the Examiner, prehearing motions do not always require a separate hearing. Decisions on prehearing motions affect whether and how a case proceeds to hearing by narrowing the issues or determining in advance whether certain testimony or evidence will be admissible at hearing. Consequently, most prehearing decisions can be appealed to court as part of an appeal of the final decision in a case. Because work on dispositive prehearing motions involves considerable Examiner time, the Office of Hearing Examiner includes them in the “decisions issued” category of annual statistics.

**Hearings:** The length of a hearing before the Hearing Examiner depends upon many variables, such as the type and complexity of a case, the number of witnesses, and the parties’ level of preparation and expertise in the subject area. Consequently, one case may take less than an hour to hear, while another case may require several hours and/or several days to hear. Because of the great variety in the types of cases that come before the Office of Hearing Examiner, we do not track the number of hearing hours, or hearing days, per case. All hearings held on each case are counted together as one hearing regardless of the time involved.

**Total decisions:** In 2010, the Office of Hearing Examiner issued a total of 169 decisions in City of Seattle cases. That number is lower than the number issued in 2008 and 2009, but higher than the number issued in 2006 and 2007. These include decisions issued after a full, evidentiary hearing, and those issued following submittal of legal memoranda and exhibits, and sometimes oral argument, on a party’s motion for full or partial dismissal of a case. We also issued 20 decisions in contract cities’ cases.

**Table 2 – 2010 Decisions Issued**

	2010	2009	2008	2007	2006	2005	Previous 5-Yr Average (05-09)
<b>B&amp;O TAX ASSESSMENTS</b>	6	10	3	8	10	6	7
<b>COUNCIL RECOMMENDATIONS</b>	12	5	7	2	10	7	6
<b>LAND USE CODE INTERPRETATIONS</b>	1	6	4	2	0	2	3
<b>LANDMARKS/SPECIAL REVIEW DISTRICT (Pioneer Sq., Pike Mrkt, ID, etc.)</b>	3	1	6	2	4	7	4
<b>LICENSING (taxis, adult entertainment, etc.)</b>	7	17	2	23	0	12	11
<b>MASTER USE PERMITS (MUP)</b>	14	30	37	27	32	36	32
<b>OTHER JURISDICTIONS (Public Nuisance, Third Party Billing, etc.)</b>	15	11	2	7	7	11	8
<b>SEPA-only Appeals (non MUP)</b>	6	3	5	1	5	5	4
<b>TENANT RELOCATIONS</b>	2	4	6	24	16	12	12
<b>TOTAL WITHOUT CITATIONS</b>	66	87	72	96	84	98	87
<b>LAND USE CITATION ENFORCEMENT ACTIONS</b>	73	77	94	34	43	60	62
<b>SDOT CITATION ENFORCEMENT ACTIONS</b>	30	38	22	19	16	36	26
<b>TOTAL CITATIONS</b>	103	115	116	53	59	96	88
<b>GRAND TOTAL</b>	169	202	188	149	143	194	175

### **Non-Citation Decisions Issued**

A total of 66 non-citation decisions were issued in 2010, fewer than in any of the previous five years although only six below the number issued in 2008.

The number of **B&O Tax appeals** decided in 2010 (6) was lower than the number decided in 2009 (10), but just slightly below the five-year average of 7.

**Recommendations to Council** on land use actions involve the same hearing, research, record review and writing time required for MUP decisions and are included in the total decision figures in Tables 2 and 3. There were 12 recommendations to Council in 2010, more than the number issued during any of the last five years. One recommendation involved an application for Council conditional use approval of an office annex at the

West Point Sewage Treatment Plant; the others were recommendations on rezone applications.

Just 1 **Land Use Code Interpretation appeal** decision was issued in 2010, below the number issued in four of the five preceding years.

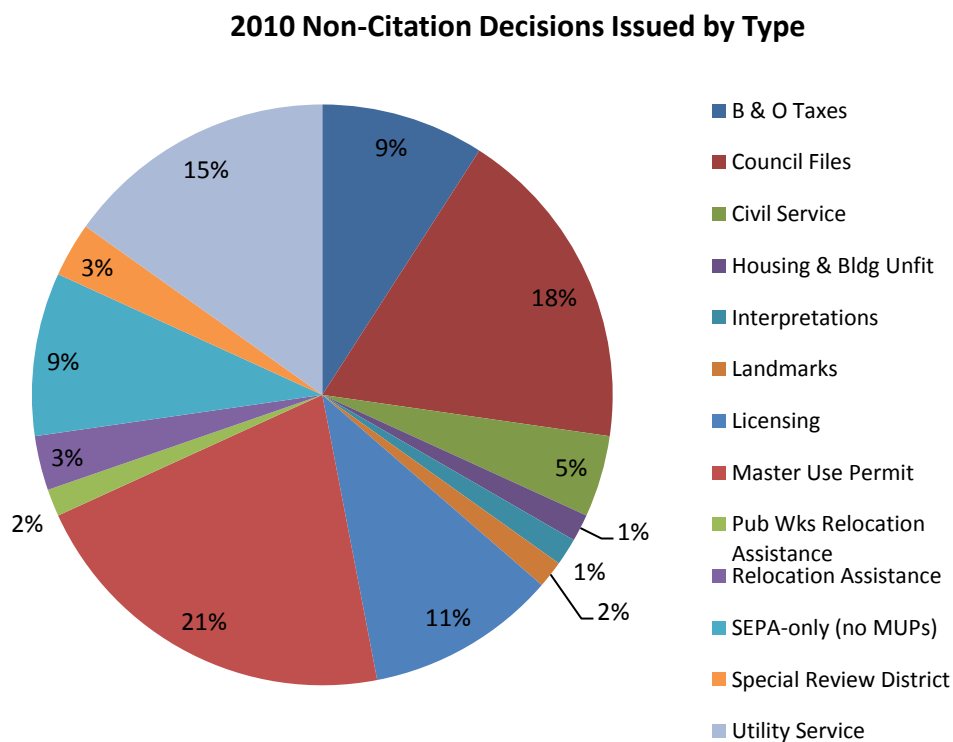
Three decisions were issued in **landmarks and special districts** appeals in 2010, which is just slightly below the previous five-year average of 4.

**Licensing appeal decisions** were down to 7 in 2010 from the 17 issued in 2009. As can be seen in Table 2, the yearly number of these appeals is quite variable. They are largely dependent upon the number of adult entertainment enforcement actions taken by the Seattle Police Department.

As always, the greatest number of decisions issued in a non-citation jurisdiction was for **MUP appeals**. The number issued in 2010 (14) was approximately half the number issued in 2009 (30) which, in turn, was slightly below the previous five-year average of 32.

Six decisions were issued in **SEPA-only appeals** in 2010, which is slightly higher than the number issued during most of the previous five years.

Just 2 decisions were issued in **appeals of the denial of tenant relocation assistance**, fewer than the number issued during any of the five preceding years.

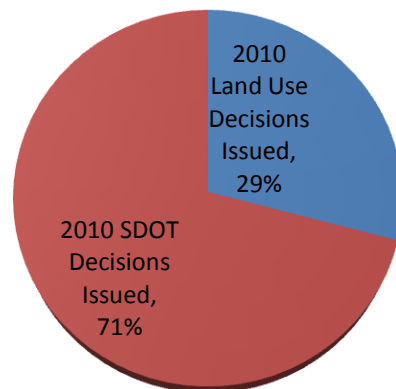


## Citation Decisions Issued

A total of 103 citation decisions were issued in 2010, approximately 10 fewer than the number issued in 2008 and 2009, but nearly twice the number issued in 2007 and well above the previous five-year average.

In **Land Use/Noise Code citation appeals**, 73 decisions were issued, which was down from the 77 decisions issued in 2009 and the 94 decisions issued in 2008, but well above the number issued in three of the five preceding years. In **SDOT citation appeals**, 30 decisions were issued, which was down from the 38 decisions issued in 2010, but higher than the number issued during the three preceding years and higher than the previous five-year average.

### 2010 Citation Decisions Issued by Type



## Disposition of Appeals to the Hearing Examiner

At the request of the Council, the Office of Hearing Examiner includes in the Annual Report a breakdown of the outcome of cases appealed to the Hearing Examiner. Table 4 shows the disposition of appeals by type of case, and is followed by an explanation of the standard of review the Examiner must use for each type.

In approximately 7% of the appeals for which the Examiner issued a final order or decision, the appeal was dismissed, often at the request of the appellant. The Examiner affirmed the City decision being appealed in approximately 36% of the appeals, modified and affirmed the decision being appealed in 4% of the appeals, affirmed the decision being appealed but reduced the penalty in 47% of the appeals, and reversed the decision of the Department in 6% of the appeals.

**Table 3 – 2010 Case Activity Summary**

	2010 Cases Filed				2010 Case Disposition			
	Pending Cases at Start of Year	Cases Filed	Total Caseload	Cases Heard *	Decisions Issued *	Cases Dismissed (No Hearing)	Defaults Issued (Untimely )	Pending Cases at End of Year
B & O TAX ASSESSMENTS	7	6	13	9	6	5	0	2
CIVIL SERVICE	2	6	8	3	3	2	0	3
COUNCIL RECOMMENDATIONS	3	10	13	12	12	0	0	1
FLOATING HOMES	0	1	1	0	0	1	0	0
HEALTH CODE	1	0	1	0	0	1	0	0
HOUSING	0	1	1	1	1	0	0	0
INTERPRETATION***	0	4	4	3	1	1	0	3
LANDMARKS***	0	1	1	1	1	0	0	0
LICENSING	3	6	9	7	7	1	0	1
MASTER USE PERMIT (MUP) ***	3	25	28	16	14	4	0	9
PUBLIC NUISANCE	0	3	3	3	0	3	0	0
PUBLIC WORKS RELOCATION ASSISTANCE***	0	1	1	0	0	0	0	1
SEPA-ONLY ***	0	6	6	4	6	1	0	1
SPECIAL REVIEW DISTRICT	0	3	3	2	2	1	0	0
TENANT RELOCATION	0	2	2	2	2	0	0	0
THIRD PARTY BILLING***	4	7	11	9	9	2	0	0
<b>TOTAL</b>	23	82	101	72	66	22	0	21
<b>CITATION ENFORCEMENT</b>	<b>Pending Appeals at Start of Year</b>	<b>Cases Filed</b>	<b>Total Caseload</b>	<b>Cases Heard</b>	<b>Decisions Issued *</b>	<b>Cases Dismissed (No Hearing) **</b>	<b>Defaults Issued</b>	<b>Pending Appeals at End of Year</b>
<b>DPD (Land Use Code)</b>	33	479	512	72	73	61	325	52
<b>SDOT (Use of Public Property)</b>	12	90	102	30	30	5	56	11
<b>TOTAL CITATIONS</b>	45	569	614	102	103	66	381	63
<b>TOTAL INCLUDING CITATIONS</b>	68	651	715	174	169	88	381	84

\* indicates some cases in category were pending from prior years or will carry-over into subsequent years

\*\* indicates rescinded citations, posthumous dismissals, or fines paid prior to default

\*\*\* indicates some cases in category may have multiple hearings or decisions



**Table 4 - Disposition of Appeals\***

	Affirmed	Affirmed, as Modified	Affirmed, Penalty Mitigated	Reversed	Remanded	Dismissed	Total
B & O TAX ASSESSMENTS	3					3	6
CIVIL SERVICE	1	1				1	3
HOUSING				1			1
LANDMARK PRESERVATION	1						1
LICENSING	2	1		2		2	7
MASTER USE PERMIT	5	3		3			11
SEPA-ONLY	4						4
SPECIAL REVIEW DISTRICT	1			1			2
TENANT RELOCATION	1			1			2
<b>Sub-Total</b>							<b>37</b>
DPD (Land Use Code)	22		49			2	73
SDOT (Use of Public Property)	11		17			2	30
<b>Sub-Total</b>							<b>103</b>
<b>Total</b>							<b>140</b>

\*Includes only appeals. Does not include subdivision applications, third party billing complaints, or recommendations to the City Council.

### **Standards of Review for Appeals by Case Type**

#### **Business and Occupation Tax Appeals**

The Director's assessment or refund denial "shall be regarded as prima facie correct, and the person shall have the burden to prove that the tax assessed or paid by him is incorrect". (SMC 5.5.55.140)

#### **Civil Service Appeals**

For terminations, demotions and suspensions, the department must show (normally by a preponderance of the evidence) that its decision or action was for justifiable cause. (Civil Service Commission Rule 5.31)

#### **Housing and Building Maintenance Appeals**

The Director's decision is to be affirmed unless the Hearing Examiner finds that it is arbitrary and capricious. (SMC 22.208.050)

#### **Landmark Preservation Appeals (certificates of approval)**

No Code provision on burden of proof, so the default is to Hearing Examiner Rule 3.17: "The department must make a prima facie showing that its decision or action complies with the law authorizing the decision or action." The appellant must then show by a preponderance of the evidence that the department's decision or action does not comply with the applicable law.

**Licensing Appeals (Adult Entertainment)**

No Code provision on burden of proof, so the default is to Hearing Examiner Rule 3.17: "The department must make a prima facie showing that its decision or action complies with the law authorizing the decision or action." The appellant must then show by a preponderance of the evidence that the department's decision or action does not comply with the applicable law.

**Master Use Permit Appeals (most land use permits and most SEPA appeals)**

The appeal "shall clearly identify each component of a ... permit being appealed" and state "specific objections to the Director's decision and the relief sought". The Director's decision "shall be given substantial weight, except for determinations on variances, conditional uses, and special exceptions, which shall be given no deference." (SMC 23.76.022)

**SEPA Only Appeals (no MUP)**

"The determination appealed from shall be accorded substantial weight and the burden of establishing the contrary shall be upon the appealing party." (SMC 25.05.680)

**Special Review District Appeals (Pike Place Market, Pioneer Square, etc.)**

Varies by district. For example: "Hearing Examiner may reverse or modify the action of the Commission only if the Hearing Examiner finds that the action of the Commission violates the terms of the Code or rules, regulations or guidelines adopted" pursuant to it (Pike Place Market, SMC 25.24.080); "The decision appealed may be reversed or modified only if the Hearing Examiner finds that the Department of Neighborhoods Director's decision was arbitrary and capricious." (Pioneer Square, SMC 23.66.030)

**Tenant Relocation Assistance Appeals**

No Code provision on burden of proof. Defaults to Hearing Examiner Rule 3.17: "The department must make a prima facie showing that its decision or action complies with the law authorizing the decision or action." The appellant must then show by a preponderance of the evidence that the department's decision or action does not comply with the applicable law.

**Citation Appeals (DPD/Land Use Code and SDOT/Use of Public Property)**

The certified citation "shall be prima facie evidence that a violation occurred and that the person cited is responsible. The certified [citation] of the inspector ... and any other evidence accompanying the report shall be admissible without further evidentiary foundation. Any certifications or declarations authorized under RCW 9A.72.085 shall also be admissible without further evidentiary foundation. The person cited may rebut the [DPD/SDOT] evidence and establish that the cited violation(s) did not occur or that the person contesting the citation is not responsible for the violation. If the citation is sustained at the hearing, the Hearing Examiner shall enter an order finding that the person cited committed the violation. If the violation remains uncorrected, the Hearing Examiner shall impose the applicable penalty." (SMC 32.91.012 & SMC 15.91.012)

## **HEARING EXAMINER JURISDICTIONS**

### **LAND USE & ENVIRONMENTAL** [Administered by Department of Planning and Development]

#### Appeals:

- Commute Trip Reduction (SMC 25.02.080)[Admin. by SCOT]
- Downtown Housing Maintenance (SMC 22.220.140)
- Energy Benchmarking Citations (SMC 22.290.140)
- Environmental Determinations (SMC 25.05.680)[Admin. by any City dept. as lead agency]
  - Determinations of Non-Significance(DNS)/ No EIS required (SMC 25.05.340)
  - Determinations of EIS Adequacy (SMC 25.05, Subchp. IV)
  - SEPA Conditions (SMC 25.05.660)
- Environmentally Critical Areas
  - Conditional Use (SMC 25.09.260)
  - Reasonable Use Exception (SMC 25.09.300)
  - Variance (SMC 25.09.590)
- Habitable Building Standards Variances (SMC 22.206.217)
- Housing & Building Maintenance Code violations (SMC 22.208.050)
- Land Use Code Citations (SMC 23.91.006)
- Land Use Code Interpretations (SMC 23.88.020)
- Master Use Permit [Type II] decisions (SMC 23.76.06, SMC 23.76.022):
  - Administrative Conditional Uses
  - Consistency with Planned Action Ordinance and EIS
  - Design Review
  - Downtown Planned Community Developments
  - Establishing Light Rail Transit Facilities
  - Establishing Monorail Transit Facilities
  - Major Phased Developments
  - Short Subdivisions
  - Special Exceptions
  - Temporary Uses
  - Variances
- Noise Code Variances (SMC 25.08.610, SMC 25.08.655)
- Noise Code Citations (SMC 25.08.910)
- Pioneer Square Minimum Maintenance Violations (SMC 25.28.300)
- Relocation Assistance: (City action causes displacement) (SMC 20.84.225, SMC 20.84.640)
- Stop Work Orders (SMC 23.76.034)
- Stormwater, Grading & Drainage exceptions (SMC 22.800.040)
- Tenant Relocation Assistance Eligibility Determinations (SMC 22.210.150)
- Weed and Vegetation Citations (SMC 10.52.032) [Admin. by DPD]

#### Land use decisions on Type III applications

- Subdivisions (SMC 23.76.024 and SMC 23.22.052)

#### Recommendations to Council on Type IV applications (SMC 23.76.036, SMC 23.76.052):

- Council Conditional Uses
- Major Amendment to Property Use and Development Agreement (SMC 23.76.058)
- Major Institution Master Plans (SMC 23.69.030)
- Public Facilities
- Rezone Petitions (SMC 23.34)

### **SCHOOL REUSE & DEPARTURES** [Administered by Department of Neighborhoods]

- School Development Standard Departures (SMC 23.79.012) within MUP decision
- School Reuse/SUAC (SMC 23.78.014) within MUP decision

### **CIVIL RIGHTS COMPLAINTS** [Administered by the Office for Civil Rights] Employment

- Discrimination Complaints (SMC 14.04.170)
- Fair Housing/Business Practice Complaints (SMC 14.08.170)
- Public Accommodations Complaints (SMC 14.06.110)
- Fair Contracting Practices (SMC 14.10.120)

**LANDMARKS AND SPECIAL DISTRICTS** [Administered by the Dept. of Neighborhoods]

Certificates of Approval for Designated Landmarks (SMC 25.12.740)  
Landmark Controls & Incentives (SMC 25.12.530) [Recommendations to City Council]  
Landmarks Code Interpretations (SMC 25.12.845)  
Special Review Districts' Certificate of Approval and Code Interpretations  
Ballard Avenue Landmark District (SMC 25.16.110 & SMC 25.16.115)  
Columbia City Landmark District (SMC 25.20.110 & SMC 25.20.115)  
Fort Lawton Landmark District (SMC 25.21.130 & 25.21.135)  
Harvard Belmont Landmark District (SMC 25.22.130 & SMC 25.22.135)  
International District (SMC 23.66.030)  
Pike Place Market Historical District (SMC 25.24.080 & SMC 25.24.085)  
Pioneer Square Historical District (SMC 23.66.030)

**HEALTH AND PUBLIC SAFETY CODE VIOLATIONS**

Graffiti Nuisance Violations (SMC 10.07.050) [Administered by Seattle Public Utilities]  
Health Code Permit Actions (SMC 10.01.220) [Admin. by Seattle-King County Public Health]  
Infectious Waste Management Ordinance Violations (SMC 21.43.090) [Admin. by Seattle-King County Public Health]  
Public Nuisance Abatements (SMC 10.09.100) [Administered by Seattle Police Department]  
Radiofrequency Radiation Ordinance Violations (SMC 25.10.540) [Admin. by Seattle-King County Public Health]

**CITY TAXES AND LICENSES** [Admin. by Executive Admin., Revenue & Consumer Affairs]:

Admission Tax Exemptions (SMC 5.40.028, SMC 5.40.085)  
All Ages Dance and Venues (SMC 6.295.180)  
Bond Claims (SMC 6.202.290)  
Business and Occupation Tax Assessments (SMC 5.55.140)  
Horse Drawn Carriage Licenses (SMC 6.315.430)  
License Denials, Suspensions & revocations (SMC 5.55.230, SMC 6.02.080, SMC 6.02.285, SMC 6.02.290, SMC 6.202.240, SMC 6.202.270)  
Animal Control:  
Animal License Denials (SMC 9.25.120)  
Determinations of Viciousness/Order of Humane Disposal (SMC 9.25.036)  
Adult Entertainment (SMC 6.270)  
For-Hire Vehicles & Drivers (SMC 6.310.635)  
Gas Piping (SMC 6.430.210)  
Panorama and Peepshows (SMC 6.42.080)  
Refrigeration Systems (SMC 6.410.210)  
Steam Engineers and Boiler Fireman (SMC 6.420.210)  
Unit Pricing (SMC 7.12.090)

**CABLE COMMUNICATIONS** – [Administered by the Office of Cable Communications]

Franchise Termination (SMC 21.60.170)  
Rates and Charges Increases (SMC 21.60.310)  
Extension of Time for Providing Service (SMC 21.60.380)

**MISCELLANEOUS JURISDICTIONS**

Civil Service Appeals (SMC 4.04.250) [Delegation from Civil Service Commission]  
Ethics Code Violations (SMC 3.70.100) [Delegation from Ethics & Elections Commission]  
Improvement District Assessment Appeals as provided by Ordinance  
LID Assessment Rolls (SMC 20.04.080) [Administered by SDOT]  
Restricted Parking Zone Appeal (SMC 11.16.317) [Administered by SDOT]  
Review of Floating Home Moorage Fees (SMC 7.20.080, SMC 7.20.090, SMC 7.20.110)  
Property Tax Exemption Elimination (SMC 5.72.110, SMC 5.73.100) [Admin. by Office of Housing]  
Side Sewer Contractor Registration Appeal (SMC 21.16.065) [Admin. by SPU]  
SDOT Citation Appeals (SMC 15.91.006) [Admin. by Dept. of Transport.]  
Street Use Appeals (SMC 15.90) [Admin. by SDOT.]  
Third Party Utility Billing Complaints (SMC 7.25.050)